(4)

167

Supreme Court, U.S.
FILED
JUL 2 8 2010
OFFICE OF THE CLERK

No. 09-1553

IN THE

SUPREME COURT OF THE UNITED STATES

CLAUDE DAVID CONVISSER,

Petitioner,

v.

DISCIPLINARY BOARD OF THE
SUPREME COURT OF NEW MEXICO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NEW MEXICO SUPREME COURT

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CLAUDE D. CONVISSER
Attorney at Law
Post Office Box 6397
Santa Fe, New Mexico 87502
505-989-9743
cdconvisser@cnols.com

Pro Se

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

REPLY ARGUMENT 1

I. Three Sets of Disciplinary Officials Furnished Direct Evidence That the Discipline Was Because of Mr. Convisser's Petitioning 2

II After Proposing to Dismiss, Disciplinary Counsel Sought to Punish Mr. Convisser with Disbarment for His Petitioning Because Disciplinary Officials Directed Counsel To Do So 3

III The Brief in Opposition Fails to Refute Any of Mr. Convisser's Challenges to Procedural Due Process 4

CONCLUSION 7

TABLE OF AUTHORITIES

Page

Cases:

In the Matter of Stein, 177 P.3d 513 (N.M. 2008) ... 7

Rules:

Rule 15(2), Rules of the Supreme Court of the United States 1

Rule 17-104(B) New Mexico Rules Annotated ("NMRA") 3

Rule 17-309(B)(2) NMRA 3

Petitioner Claude D. Convisser ("Mr. Convisser") respectfully states as his reply to the opposition to his petition for writ of *certiorari* ("Petition") as follows:

REPLY ARGUMENT

The brief in opposition filed by deputy disciplinary counsel Joel L. Widman ("Mr. Widman") for the New Mexico Supreme Court breaches Mr. Widman's "obligation to the Court to point out ... any perceived misstatement [of fact or law] made in the [P]etition." Rule 15(2), Rules of the Supreme Court of the United States.

The brief in opposition cites to little record evidence to support its argument for denial of the Petition. Despite Mr. Widman's complaint that the Petition's "half-truths, misrepresentations and the utilization of matters out of context" force him "to spend time and space correcting the matters presented instead of dealing with the case on its merits,"[1] it is apparent that he spent scant time and barely seven pages of space addressing either Mr. Convisser's alleged mis-statements or the merits. Instead, Mr. Widman relies on slur and innuendo on the assumption that this Court will defer to the lower court without examining the compelling constitutional and public policy reasons to grant Mr. Convisser's Petition. In light of the New Mexico Supreme Court's issuance of an opinion in this case on July 13, 2010, Mr. Widman is, therefore, estopped in any supplemental brief from addressing points of fact and law to which

---

[1]Brief in opposition, at 1.

he failed to object with specificity in his brief in opposition. *See* Supplemental Brief Supporting Petition for Writ of Certiorari, filed herewith.

Notably, the brief in opposition does not dispute that Mr. Convisser raised all federal constitutional questions presented below. Thus, this Court has probable cause for jurisdiction over the Petition.

I Three Sets of Disciplinary Officials Furnished Direct Evidence That the Discipline Was Because of Mr. Convisser's Petitioning

In the opening sentence of the brief in opposition, Mr. Widman charges that Mr. Convisser's claim that the New Mexico Supreme Court imposed discipline for his First Amendment petitioning "is not true[,] has no basis in fact[, and] is an outright falsehood." Brief in opposition, at i. In fact, Mr. Widman himself argued to the disciplinary board panel that Mr. Convisser's petitioning was "certainly not the conduct we want to see in somebody admitted to practice law in New Mexico." App. 107a. The hearing committee recommended that Mr. Convisser's future practice of law, if any, be conditioned on his not assisting others to exercise their First Amendment right to petition. App. 23a (¶ 39(B)). The hearing committee knew from hearing testimony that the Rescue EcoVersity petition was the only legal action Mr. Convisser was then involved in concerning the target of the petition, complaining witness Harbour.

The reviewing officer, whose lead Mr. Widman and the hearing committee followed, overruled Mr. Widman's proposed dismissal of all allegations of misconduct against Mr. Convisser and cited "Mr. Convisser's repeated attempts to have a grand jury summoned to investigate criminal fraud" as the thing that, "more than anything else, bothers [her] about the entire file." App. 43a. While the reviewing officer also believed that Mr. Convisser's petitioning, the only form of grand jury summoning he had done, "smack[ed] of [his] trying to carve out a legal role for himself," App. 43a, she did not recommend any disciplinary charge for improper solicitation of clients, despite the obligation under Rule 17-309(B)(2) New Mexico Rules Annotated ("NMRA") (App. 82a) to include all ethical violations in the specification of charges. Thus, her true and sole objection was to his petitioning.

II After Proposing to Dismiss, Disciplinary Counsel Sought to Punish Mr. Convisser With Disbarment For His Petitioning Because Disciplinary Officials Directed Counsel To Do So

The "credible reason why [Mr. Widman] would want to punish [Mr. Convisser] for his petitioning" after proposing dismissal, brief in opposition, at 1, is that Rule 17-104(B) NMRA (App. 80a) required Mr. Widman to abide by the reviewing officer's veto of his proposed dismissal and thus, to file charges based on the reviewing officer's opinions. The hearing committee fortified the impetus for Mr. Widman to pursue Mr. Convisser for his petitioning in its adoption of the reviewing officer's prejudice against Mr.

Convisser's petitioning. Hearing committee recommendation, ¶ 39(B) (App. 23a). Mr. Widman's argument to the disciplinary board panel that Mr. Convisser's petitioning was "certainly not the conduct we want to see in somebody admitted to practice law in New Mexico," App. 107a, expressed in stark terms the unconstitutional, discriminatory motivation originating from his disciplinary superiors. In turn, the recommendations by the hearing committee and disciplinary board panel for Mr. Convisser's suspension, probation, and a mental evaluation followed directly on Mr. Widman's requests for Mr. Convisser's disbarment. This was vindictive.

III The Brief in Opposition Fails to Refute Any of Mr. Convisser's Challenges to Procedural Due Process

Mr. Widman points out that Mr. Convisser did not provide extensive factual detail supporting his proposition that the findings were in fact not supported by substantial evidence in the record. Brief in opposition, at 6. This argument misses Mr. Convisser's point of law that the New Mexico Supreme Court's unquestioning application of the very standard of appellate review by substantial evidence in the face of direct evidence that unconstitutional intent infected the hearing committee's findings of fact and their adoption by the disciplinary board panel constituted a denial of due process, especially when that Court reviewed findings made by the lowly and, in the lawyer disciplinary context, abnormal standard of proof by preponderance of the evidence. Mr. Convisser's inability to show with extensive factual detail that the

findings are not supported by substantial evidence was due to space limitations in the Petition and to the myriad legal issues he had to address therein.

Evidence that *ex parte* communications influenced the recommendation for a mental health evaluation and ultimately, the matters before New Mexico Supreme Court's lies in complaining witness Harbour's testimony that he had *ex parte* communications on the phone with the hearing committee chair, (tab 88, exhibit 4);[2] Mr. Convisser's testimony that Mr. Harbour has been spreading retaliatory, malicious rumors about him in Santa Fe (tab 87, ¶ 6), disciplinary board panel member Carolyn Tinker's statement that that panel had received communications implicating Mr. Convisser in having "mood swings like crazy" (App. 108a); and Mr. Widman's non-privileged, defamatory statements, overheard by Dr. Janeen Maas, to the effect that Mr. Convisser is schizophrenic and delusional, published on the very day and in the very place that Mr. Widman denied to the New Mexico Supreme Court having made such statements to the two panels below it.

In response to Mr. Convisser's argument that he was not provided advance notice of certain of the ethical allegations against him and thus, was denied an opportunity to offer a defense to them at the hearing, Mr. Widman asserts that the findings do not expressly identify any other of the New Mexico Rules

---

[2] References to tab numbers are to docket entries appearing in the disciplinary board pleading index. App. 55a-61a.

of Professional Conduct than those stated in the specification of charges. However, since at disciplinary counsel's post-hearing request, the hearing committee included factual detail comprising violations of uncharged Rules in paragraphs 6 (incompetence), 17 (extortion), 19 (misrepresentation to disciplinary counsel), and 23 (failure to report another attorney's misconduct) of its findings (App. 12a-18a), the hearing committee considered this detail to be relevant. Since the New Mexico Supreme Court adopted the hearing committee's findings, including descriptions of the infractions of which Mr. Convisser never received notice, Mr. Convisser suffered actual prejudice by this tactic. It was Mr. Convisser's post-hearing motion to strike Mr. Widman's inclusion of this material in his proposed findings that gave rise to the hearing committee's branding Mr. Convisser's behavior as "bizarre and peculiar," based on an email exchange that is not in the record and whose contents, furthermore, are in fact misrepresented in paragraph 36 of the findings. App. 22a.

Mr. Widman's assurance that Mr. Convisser "inspected whatever documents were contained in disciplinary counsel's file," brief in opposition, at 7, misses the point that there is compelling evidence that Mr. Widman removed some potentially exculpatory documents from the file before he allowed Mr. Convisser access. Rather than stating simply that he allowed Mr. Convisser to inspect "all documents in the file," Mr. Widman, by the phraseology quoted above, begs the question of whether he had already secreted documents from the file by the time he allowed Mr. Convisser to view it. This prosecutorial misconduct

would be in keeping with the admonishment Mr. Widman received in *In the Matter of Stein* for having hidden documents from that attorney-respondent. 177 P.3d 513, 525 (N.M. 2008). Although as Mr. Widman notes, Mr. Convisser was allowed to conduct some depositions, the protective order entered over Mr. Convisser's objection severely constrained their scope and prevented him from impeaching witnesses and offering a worthy defense at the hearing.

CONCLUSION

The conclusion of the brief in opposition, at 7-8, is false: that "[t]here is simply no basis in the record for arguing, much less concluding, that petitioner was prosecuted for exercising his First Amendment rights or that he was denied due process or equal protection of the law." To the contrary, there is strong reason to believe the opposite, answer all of Mr. Convisser's questions presented in the affirmative, and grant his Petition.

Respectfully submitted,

Claude D. Convisser
Attorney at Law
P.O. Box 6397
Santa Fe, New Mexico 87502
505-989-9743
cdconvisser@cerols.com

Pro Se